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No. 81-2277

In the Supreme Court of the United States

OCTOBER TERM, 1982

NORTH STATE CHEMICALS, INC., PETITIONER

v.

O.W. STRICKLAND, ETC., ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE FEDERAL RESPONDENT IN OPPOSITION

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1. Petitioner filed this action in the Superior Court of Guilford County, North Carolina, against various state and county officials seeking to enjoin them from interfering with petitioner's hazardous wastes facility. Petitioner amended its complaint to join the Regional Administrator of Region IV of the United States Environmental Protection Agency as a defendant. Pet. App. A2.

The Regional Administrator removed the case to the United States District Court for the Middle District of North Carolina. 28 U.S.C. 1442(a)(1). The district court dismissed petitioner's claim against the Regional Administrator for lack of jurisdiction and remanded the remainder of the case to the state court. Pet. App. A16-A17. Since sovereign immunity barred state court jurisdiction of the action against the Regional Administrator, the district

court concluded that it had acquired no jurisdiction upon removal. The court of appeals summarily affirmed. 679 F. 2d 885; Pet. App. A3.

2. A federal court's jurisdiction on removal is derivative. As petitioner recognizes (Pet. 26), if a state court lacks subject matter jurisdiction of a case, a federal court acquires none on removal, even though the federal court would have had jurisdiction had the claim originally been brought before it. *Arizona* v. *Manypenny*, 451 U.S. 232, 242 n.17 (1981); *Minnesota* v. *United States*, 305 U.S. 382, 389 (1939); *Lambert Run Coal Co.* v. *Baltimore & O.R.R.*, 258 U.S. 377, 382 (1922).

Petitioner's only contention in this Court is that sovereign immunity is not a jurisdictional bar.[1] That claim was laid to rest in this context long ago. See, *e.g.*, *Minnesota* v. *United States*, *supra*, 305 U.S. at 388-389; *Lambert Run Coal Co.* v. *Baltimore & O.R.R.*, *supra*, 258 U.S. at 381-383. See also *United States* v. *Sherwood*, 312 U.S. 584, 587-588 (1941). Petitioner cites no contrary authority.[2] Since the decision of the court of appeals is correct and conflicts with no decision of any other court, review by this Court is plainly unwarranted.

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[1]Petitioner does not challenge the district court's conclusion that sovereign immunity was a valid defense to the action in state court.

[2]Petitioner's reliance (Pet. 23-24) on *Manufacturers National Bank* v. *Brownstown Square Apartments*, 491 F. Supp. 206 (E.D. Mich. 1980); and *National Treasury Employees Union* v. *Campbell*, 589 F. 2d 669 (D.C. Cir. 1978), is misplaced. In both cases the court acknowledges that sovereign immunity is a jurisdictional bar.

In addition, the holding of the court of appeals in this case is of little practical consequence. On October 7, 1981, petitioner filed a new action against the Regional Administrator in the United States District Court for the Middle District of North Carolina (Civil No. C-81-625-G).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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